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SUMMARY RECORD OF THE 1st PLENARY MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Monday, 15 June 1998, at 10 a.m.

Temporary President: Mr. Kofi ANNAN (Secretary-General of the United Nations)
President: Mr. CONSO (Italy)

CONTENTS

Agenda item		*Paragraphs*
1	Opening of the Conference by the Secretary-General	1-12
-	Address by the President of the Republic of Italy	13-18
2	Election of the President	19-27
-	Statement by the Director-General of the Food and Agriculture Organization of the United Nations	28-29
3	Adoption of the agenda	30

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Agenda item		*Paragraphs*
4	Adoption of the rules of procedure	31-33
5	Election of Vice-Presidents	34-36
6	Election of the Chairman of the Committee of the Whole	37-38
7	Election of the Chairman of the Drafting Committee	39-40
8	Appointment of the Credentials Committee	41-42

The meeting was called to order at 10.15 a.m.

OPENING OF THE CONFERENCE BY THE SECRETARY-GENERAL

1. **The TEMPORARY PRESIDENT** declared open the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court.

2. *At the invitation of the Temporary President, the participants observed a minute of silence for prayer or meditation.*

3. **The TEMPORARY PRESIDENT** thanked the Italian Government for its generosity in hosting the Conference and for its continued strong support of the United Nations.

4. The road leading to the holding of the Conference in the "Eternal City" had been a long one, passing through some of the darkest moments in human history but also marked by the belief that the true nature of human beings was to be noble and generous. Though most human societies had practised warfare, most had also had some kind of warrior code of honour, proclaiming the need to protect the innocent and to punish excesses of violence. Unhappily, that had not prevented the extermination of indigenous peoples or the barbaric trade in African slaves.

5. With the use of weapons of mass destruction and the application of industrial technology to dispose of millions of human beings, the world had come to realize that relying on each State or army to punish its own transgressors was not enough. All too often, such crimes were part of a systematic State policy and the worst criminals might be found at the pinnacle of State power.

6. After the defeat of nazism and fascism, the United Nations had been set up in an effort to ensure that world war could never happen again. The victorious Powers had set up international tribunals at Nuremberg and Tokyo to judge the leaders who had ordered and carried out the worst atrocities. They had decided to prosecute Nazi leaders not only for war crimes but also for crimes against humanity, including the Holocaust. However, the General Assembly of the United Nations had not considered it sufficient to make an example of a few arch-criminals. It had adopted the Convention on the Prevention and Punishment of the Crime of Genocide, and requested the International Law Commission to study the possibility of establishing a permanent international criminal court. The cold war had prevented further progress at the time but had not prevented further crimes against humanity.

7. The most notorious example of such crimes in that period had been the killing of more than two million people in Cambodia, the organizer of which had recently died without being brought to justice. It was not until the 1990s that a political climate had prevailed in which the United Nations could again consider establishing an international criminal court. Unhappily, the current decade had also brought new crimes to force the issue on the world's attention. Events in the former Yugoslavia had added the dreadful euphemism of "ethnic cleansing" to the international vocabulary. Perhaps a quarter of a million people, mostly civilians guilty only of living on the wrong side of an arbitrary line, had died there between 1991 and 1995. In 1994, there had been the genocide in Rwanda, which had done irreparable damage not only to one small country but to the very idea of an international community. In future, the United Nations and its Member States must summon the will to prevent the repetition of such a catastrophe anywhere in the world, and as part of that effort it must be made clear that such crimes would be punished.

8. Following the events in the former Yugoslavia and Rwanda, ad hoc tribunals had to be set up for those two countries. The tribunals had issued indictments and international arrest warrants. Persons indicted but not yet arrested had become international pariahs who, though enjoying the presumption of innocence, could not travel freely or hold political office. Six weeks before the current Conference, a former Prime Minister of Rwanda had pleaded guilty before a tribunal to the charge of genocide—representing an historic milestone.

9. Whatever their imperfections, the tribunals were showing that there was such a thing as international criminal justice, and that it could have teeth. But ad hoc tribunals were not enough. People all over the world wanted to know that whenever genocide, war crimes or other such violations were committed, there was a court before which the criminal could be held to account, a court where "acting under orders" was no defence, a court where all individuals in a government hierarchy or military chain of command, without exception, must answer for their actions.

10. World public opinion had led to the holding of the Conference, stimulated by the hard work of the Red Cross, of many other non-governmental organizations and of the humanitarian community. The whole world would be watching the Conference, and concrete results would be expected.

11. The difficulties to be overcome in the five weeks ahead should not be underestimated. The work of the Preparatory Committee had shown the complexity of the issue and how many conflicting principles and interests had to be reconciled. Some small States feared giving pretexts for more powerful ones to set aside their sovereignty. Others worried that the pursuit of justice might sometimes interfere with the vital work of making peace. Those concerns had to be taken into account. Obviously, the aim must be to create a statute that would be accepted and implemented by as many States as possible. But the overriding interest must be that of the victims, and of the international community as a whole. The court must be strong and independent enough to carry out its tasks, an instrument of justice, not expediency; it must be able to protect the weak against the strong.

12. He hoped that the participants, in the long weeks of hard and detailed negotiations that lay ahead, would feel that the eyes of the victims of past crimes, and of the potential victims of future ones, were fixed firmly upon them. The Conference offered an opportunity to take a monumental step in the name of human rights and the rule of law, an opportunity to create an institution that could save lives and serve as a bulwark against evil, bequeathing to the next century a powerful instrument of justice. Future generations would not forgive failure in that endeavour.

ADDRESS BY THE PRESIDENT OF THE REPUBLIC OF ITALY

13. **Mr. SCALFARO** (President of the Republic of Italy) said that his country was honoured to host the Conference. It was aware of the great responsibility entailed and was committed to ensuring the Conference's success.

14. The basis for the Conference was the 1948 Universal Declaration of Human Rights. The rights therein proclaimed were inherent rights, not something granted as a concession by a State or the United Nations. To deprive persons of such rights was no longer to treat them as persons. The Italian Constitution, in article 2, recognized the inviolable rights of human beings. "Recognition" implied that the existence of such rights had preceded the establishment of the State; States had been created to give them a legal and constitutional form.

15. In the introductory paragraph preceding the articles, the Universal Declaration of Human Rights called on every individual and every organ of society to strive to promote respect for the rights and freedoms proclaimed. According to article 1 of the Declaration, "All human beings are born free and equal in dignity and rights". Human beings should work together in a spirit of brotherhood, respecting each other's rights; they should obey a universal moral law protecting human dignity and condemning acts against humanity.

16. Since the adoption of the Declaration, there had been countless violations of human rights, including ethnic cleansing, genocide, the denial of the rights of minorities, child abuse and denial of people's right to their beliefs. A supranational body was needed with the power to examine and punish such violations. The ad hoc tribunals set up for the former Yugoslavia and Rwanda represented positive advances, but they worked only in a limited context. Criminal law should always precede crimes; it should be known that the crimes were punishable by law and what the penalties would be. It should be possible for appeals to be brought. Any tribunal set up should be impartial and competent, the rights of the defendant as well as of the international community should be protected, and it should be borne in mind that justice delayed was justice denied.

17. An international criminal court should not undermine the concept of national sovereignty, but crimes such as those that had been committed in Rwanda and the former Yugoslavia called for qualified supranational judges, able to overcome the barriers of national frontiers. Such crimes affected humanity as a whole. A crime committed by a Government or a self-proclaimed authority could be judged only by a court which was set above States and countries.

18. Those were the problems to which a reply was awaited. The Conference would not have an easy task, but he was convinced that, working together, the participants could overcome the difficulties.

The meeting was suspended at 10.45 a.m. and resumed at 10.50 a.m.

ELECTION OF THE PRESIDENT

19. **The TEMPORARY PRESIDENT** said it was his understanding that Mr. Giovanni Conso (Italy) had been nominated by all the regional groups for the office of President.

20. *Mr. Giovanni Conso (Italy) was elected President by acclamation and took the Chair.*

21. **The PRESIDENT** said that, after the end of the cold war, many States had accepted the principles of democracy and respect for fundamental human rights, and hopes had been raised for lasting peace among peoples and security and cooperation among States. Unfortunately, those hopes had been disappointed. Armed conflict had raged in many parts of the world and terrible atrocities had occurred. At that very moment, acts of violence were being committed against innocent civilians. The world could not remain indifferent to such behaviour. Decisive measures were needed to bring such acts of violence to an end. The establishment of an international criminal court would send the unmistakable message to all those responsible for abominable crimes that they could no longer act with impunity, and that they would be brought to justice. It would make it clear that no one was above the law, and that anyone seen as bearing individual criminal responsibility for such atrocities would be punished.

22. Several attempts had been made to establish an international criminal court since the end of the Second World War. The achievement of that objective had been hampered in the past by the prevailing political climate, but the world was currently closer to realizing that aim than ever before, and the Conference should not waste the opportunity to achieve its goal.

23. The expectations of mankind must not be disappointed. The court must be universal and independent so that it could prosecute the most serious crimes impartially and efficiently. World public opinion would follow the work of the Conference very closely to see that it completed its essential task of adopting a convention that would lead to the setting up of an international criminal court.

24. The establishment, at the initiative of the Security Council, of ad hoc tribunals for the former Yugoslavia and Rwanda showed that the political will existed and that it was possible to establish a viable international mechanism that was equitable and just. Such a permanent international mechanism could guarantee that there would be no selective justice, but that whenever odious crimes were committed, wherever they took place, they would be punished.

25. Finally, the establishment of an international criminal court would be the guarantee of a more humane and just world order.

26. He thanked the Preparatory Committee for its excellent work under the chairmanship of Mr. Adriaan Bos, who was unfortunately not able to be present.

27. He would spare no effort to ensure that the Conference could elaborate and adopt a convention establishing an international criminal court. He was sure that the importance of the aims that the Conference was seeking to achieve would be present in the minds of all participants.

STATEMENT BY THE DIRECTOR-GENERAL OF THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

28. **Mr. DIOUF** (Director-General, Food and Agriculture Organization of the United Nations) welcomed the participants to FAO Headquarters and said that an objective implicit in the mandates of all agencies of the United Nations system was to secure universal respect for human rights and fundamental freedoms throughout the world. The world's leaders had stressed that objective at the World Food Summit held in Rome in 1996, in the context of the fight against hunger.

29. FAO was happy to lend its support to the efforts of the Conference to establish a permanent international criminal court, as a decisive step forward in the struggle for peace and justice and respect for human rights in conflict situations. He hoped that the work of the Conference over the next few weeks would be fruitful and would set the scene for a new millennium in which the human rights and fundamental freedoms of all people were universally respected.

ADOPTION OF THE AGENDA (A/CONF.183/1)

30. *The provisional agenda (A/CONF.183/1) was adopted.*

ADOPTION OF THE RULES OF PROCEDURE (A/CONF.183/2/Add.2, A/CONF.183/4, A/CONF.183/5)

31. **The PRESIDENT** said that some of the draft rules of procedure in document A/CONF.183/2/Add.2 had given rise to disagreement in the Preparatory Committee. Consequently, the figures contained in draft rules 6, 11 and 49 had been placed in square brackets. Draft rules 19, 36 and 52 had also been placed in square brackets.

32. However, informal consultations had since taken place and the outstanding questions had been resolved. The results of those consultations were reflected in documents A/CONF.183/4 and A/CONF.183/5. He therefore suggested that the draft rules of procedure contained in document A/CONF.183/2/Add.2, as amended and supplemented by documents A/CONF.183/4 and A/CONF.183/5, be adopted.

33. *It was so decided.*

ELECTION OF VICE-PRESIDENTS

34. **The PRESIDENT** said that, in accordance with rule 6 of the rules of procedure, the regional groups had put forward the candidatures of the following States to fill the 31 posts of Vice-Presidents of the Conference:

> Algeria, Austria, Bangladesh, Burkina Faso, Chile, China, Colombia, Costa Rica, Egypt, France, Gabon, Germany, India, Iran (Islamic Republic of), Japan, Kenya, Lithuania, Malawi, Nepal, Nigeria, Pakistan, Russian Federation, Samoa, Slovakia, Sudan, Sweden, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.

35. He therefore suggested that the representatives of those States be elected to the posts of Vice-Presidents of the Conference.

36. *It was so decided.*

ELECTION OF THE CHAIRMAN OF THE COMMITTEE OF THE WHOLE

37. **The PRESIDENT,** referring to paragraph 4 of document A/CONF.183/4, said that, following consultations, Mr. Philippe Kirsch (Canada) had been nominated by the regional groups as Chairman of the Committee of the Whole.

38. *Mr. Philippe Kirsch (Canada) was elected Chairman of the Committee of the Whole by acclamation.*

ELECTION OF THE CHAIRMAN OF THE DRAFTING COMMITTEE

39. **The PRESIDENT** said that Mr. Cherif Bassiouni (Egypt) had been nominated as Chairman of the Drafting Committee.

40. *Mr. Cherif Bassiouni (Egypt) was elected Chairman of the Drafting Committee by acclamation.*

APPOINTMENT OF THE CREDENTIALS COMMITTEE

41. **The PRESIDENT** said that, in accordance with rule 4 of the rules of procedure, a Credentials Committee would be set up, composed of nine members. It was his understanding that the membership would be the same as that of the Credentials Committee of the fifty-second session of the General Assembly and therefore suggested that the Credentials Committee should be made up of the representatives of Argentina, Barbados, Bhutan, China, Côte d'Ivoire, Norway, Russian Federation, United States of America and Zambia.

42. *It was so decided.*

The meeting rose at 11.20 a.m.